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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

NATALIE ELIZABETH GARCIA,

Defendant and Appellant.

B222955

(Los Angeles County
Super. Ct. No. PA063463)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ronald S. Coen, Judge. Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Zee Rodriguez and Erika D. Jackson, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant, Natalie Elizabeth Garcia, appeals from her convictions for willful, premeditated and deliberate attempted murder (Pen. Code,¹ §§ 187, subd. (a), 664, subd. (a)) and mayhem (§ 203) as well as the finding that she caused great bodily injury. (§ 12022.7, subd. (a).) Defendant argues that the trial court improperly imposed a concurrent sentence on count 2. We affirm the judgment.

We view the evidence in a light most favorable to the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Osband* (1996) 13 Cal.4th 622, 690; *Taylor v. Stainer* (9th Cir. 1994) 31 F.3d 907, 908-909.) Defendant agreed to waive a jury trial and have the court proceed on the preliminary hearing transcript based upon a determination that the victim was unavailable. Defendant and Emilio C. were siblings. Defendant was born on December 31, 1990. Emilio was born in January 1993. In June 2008, Emilio and defendant got into an argument. Emilio hit defendant with his fist in the face. Defendant in turn hit Emilio with her fist, causing him to fall. Thereafter, defendant got on top of Emilio and continued to hit him. Defendant then bit Emilio's ear, which left a piece of his ear almost separated. Defendant told Emilio, "I'm going to kill you." Emilio's mother took him to the hospital for medical treatment. Defendant was arrested in connection with this assault.

On June 27, 2008, defendant told Emilio that she knew where an AK-47 rifle was hidden in the nearby trails of Chatsworth. Defendant told Emilio to write a note to his mother indicating that he was at his friend's home. Defendant and Emilio took a bus to the park where the trail was located. Thereafter, they walked a few more hours. Defendant instructed Emilio to start digging near a tree where the rifle was allegedly buried. After Emilio dug for approximately 30 minutes, he was standing inside the hole, which was approximately two feet by three feet. Defendant pulled a knife from her pants. Defendant pushed the knife against Emilio's neck. Emilio jumped out of the hole. Emilio attempted to run, but tripped and fell on his face. Defendant stabbed Emilio in the back. Defendant then stabbed Emilio's stomach twice. Defendant allowed Emilio to

¹ All further statutory references are to the Penal Code unless otherwise indicated.

remain on the trail for approximately an hour. Emilio asked defendant not to kill him. Defendant told Emilio that she had to kill him. Defendant said, "It's time for [you] to die, to go to sleep." Defendant then got on top of Emilio and began slashing his neck. At the preliminary hearing, Emilio displayed the scars on his neck, abdomen and back to the court.

Emilio pleaded with defendant to help him. Emilio said that he would not tell anyone. Defendant placed the knife and her backpack in the hole Emilio had dug and covered them with dirt. Defendant then dragged Emilio to the road. Defendant told Emilio to say that two guys attacked him. Defendant stopped a passing car to ask them to get help. Police and fire department personnel arrived. Emilio was taken to the hospital, where he remained for a week.

Los Angeles Police Officer Humberto Fajardo investigated this case. Officer Fajardo inquired about Emilio's injuries at Providence Holy Cross Medical Center. Officer Fajardo learned that Emilio suffered lacerations to his neck and left thumb and puncture wounds to his upper torso and back. Emilio's left lung collapsed as a result of a puncture. One of Emilio's kidneys was removed due to a puncture wound. Officer Fajardo interviewed defendant when she was taken into custody. The parties stipulated for the preliminary hearing that defendant was advised of her rights and voluntarily waived them. Defendant admitted that she took Emilio up to the hills under the pretext that they would find a buried AK 47 rifle. Defendant had Emilio dig a hole. Defendant then told Emilio that it was time to die. Defendant stabbed Emilio. A transcript of the interview revealed that defendant intentionally took Emilio to the trail to kill him to help her family. Defendant admitted stabbing Emilio but indicated she felt sorry after having done so. Defendant said when she first stabbed Emilio she thought it would be better if he was dead because she was saving her brothers and sisters from a massacre. Defendant felt sorry for her brother because he was looking into her eyes saying, "I'm sorry."

Defendant's sole argument on appeal is that the trial court improperly sentenced her to separate concurrent sentences for the attempted murder and mayhem because they occurred during the same indivisible course of conduct. The trial court sentenced

defendant to life imprisonment for the willful, deliberate, and premeditated murder that caused serious injury and a concurrent two-year sentence for the mayhem. We review the trial court's order imposing multiple sentences in the context of a section 654, subdivision (a)² question for substantial evidence. (*People v. Osband*, *supra*, 13 Cal.4th at pp. 730-731; *People v. Downey* (2000) 82 Cal.App.4th 899, 917; *People v. Oseguera* (1993) 20 Cal.App.4th 290, 294; *People v. Saffle* (1992) 4 Cal.App.4th 434, 438.) The trial court has broad latitude in determining whether section 654, subdivision (a) applies in a given case. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143; *People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312; *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1466.) In conducting the substantial evidence analysis we view the facts in the following fashion: "We must 'view the evidence in a light most favorable to the respondent and presume in support of the order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]' (*People v. Holly* (1976) 62 Cal.App.3d 797, 803.)" (*People v. McGuire* (1993) 14 Cal.App.4th 687, 698; see also *People v. Williams* (2009) 170 Cal.App.4th 587, 645; *People v. Green* (1996) 50 Cal.App.4th 1076, 1085.) Multiple criminal objectives may divide those acts occurring closely together in time. (*People v. Davis* (2005) 36 Cal.4th 510, 557; *People v. Hicks* (1993) 6 Cal.4th 784, 788-789; *People v. Harrison* (1989) 48 Cal.3d 321, 335-336 [the court looks to the "defendant's intent and objective" to determine if multiple acts are indivisible]; *People v. Davey* (2005) 133 Cal.App.4th 384, 390.)

Our Supreme Court has held: "'If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.' [Citation.] . . . We noted, however, that cases have sometimes found separate objectives when the objectives were either (1) consecutive even if similar or (2) different even if simultaneous. In those cases, multiple punishment was permitted. [Citation.]"

² Section 654 states in part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

(*People v. Britt* (2004) 32 Cal.4th 944, 952; see also *People v. Wynn* (2010) 184 Cal.App.4th 1210, 1215.)

Section 203 describes mayhem as, “Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear or lip, is guilty of mayhem.” In this case, defendant stabbed Emilio in the back and abdomen several times, puncturing his lung and ultimately causing the loss of his kidney. Defendant’s initial stabbings of Emilio caused the mayhem. Thereafter, defendant left Emilio bleeding for approximately an hour. Emilio then pleaded with defendant not to kill him. However, defendant told him he had to die and slit his neck twice. Defendant had an opportunity to reflect on her actions before initiating the slashing of Emilio’s neck. Implicit in the trial court’s concurrent sentencing order is that the defendant entertained separate intentions when she first committed the mayhem and later the attempted murder of Emilio. The trial court could reasonably find that the mayhem involved a separate and distinct act from the attempted murder and impose separate sentences thereto.

The judgment is affirmed.

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TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.